IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 988 of 2006
With
SPECIAL CIVIL APPLICATION No. 989 of 2006
To
SPECIAL CIVIL APPLICATION No. 997 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASARI JIGNESHKUMAR NARSIBHAI & 9 - Petitioner(s)

Versus

SAURASHTRA UNIVERSITY THR' VICE CHANCELLOR & 4 - Respondent(s)

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Appearance :

MR G RAMAKRISHNAN for Petitioner(s) : 1 - 10.
MR JR NANAGATI ON BEHALF OF MR AR THACKER for Respondent(s) : 1, 5,
MR HM PRACHCHHAK AGP for Respondent(s) : 2 - 3.
NOTICE SERVED BY DS for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/02/2006

ORAL JUDGMENT

1. Rule. Mr.AR Thacker for respondent Nos.1 and 5, Mr.H.M. Prachchhak, learned AGP for respondent Nos.2 and 3.

2. With the consent of the parties, the matter is taken up for final hearing today.

3. As the common question of facts and law arise in this group of petitions, the same are being disposed of by this common judgment and order.

4. By way of these petitions, the respective

petitioners have prayed for appropriate writ, order and/or directions quashing and setting aside the order dtd.22/12/2005 as well as to quash and set aside the revised result dtd.30/11/2005 passed against the petitioners.

5. All the petitioners are medical college students and were prosecuting their study in various courses available to them in their respective medical colleges, such as M.P. Shah Medical College, Jamnagar and C.U. Shah Medical College, Surendranagar. Both these colleges are under Saurashtra University, Rajkot. The petitioners appeared in their respective semester examinations and their results came to be declared on 27/10/2005 and out of 10 petitioners, 2 petitioners were declared passed and 8 petitioners were declared failed. However, while declaring their results on 27/10/2005, the University mentioned in the Mark-sheet, the marks obtained by them in theory / practical in

external as well as internal marks. It is the case on behalf of the petitioner that subsequently abruptly after 1 month and 10 days of declaring the result dtd.27/10/2005, the respondents have revised the results by declaring the petitioners as absent as well as failed in the given semester examination. It is the contention on behalf of the petitioners that no opportunity of being heard is given to the petitioners before such actions being taken and the results have been declared showing the petitioners as absent / failed by revising the earlier results. It is the contention on behalf of the petitioners that the petitioners upon receiving the revised results, submitted written representation to the respondent No.5 on 21/12/2005 seeking reasons for the revised results and it was particularly asked as to what was the reasons for initiating such belated actions and for what fault of the petitioners. However, the respondent without assigning any

reason to the representation of the petitioners, had stated vide reply dtd.22/12/2005 that the revised results will stand unchanged and therefore,the petitioners have preferred these petitions under Article 226 of the Constitution of India for the aforesaid reliefs.

6. Number of submissions have been made on behalf of the petitioners as well as respondents with regard to applicability of Ordinance No.173, 173-A and 172 and Regulation 12 of Medical Council of India, Circular dtd. 25/5/2004 issued by the Saurashtra University.

7. It is the contention on behalf of the respondent University that earlier the respective petitioners were assigned internal marks and their marks were shown in the Mark-sheet dtd.27/10/2005. However, subsequently when it has come to the knowledge of the University that an application of proper implementation of

Regulation 12 of the Medical Council of India as none of the petitioners have obtained more than 35% of the marks in the internal, they were required to be declared as failed and they were shown as absent and according to them, absent means failed and absent does not means that they have not appeared in the examination at all. As stated above, number of submissions have been made on behalf of the parties. However, in view of the fact that the impugned decision is taken and the Mark-sheets are revised without giving an opportunity to the petitioners and without bringing to their knowledge the reasons for amending the Mark-sheet, and in two cases even external marks are also reduced without their being any application for re-checking / re-assessment of the results of those students namely Asari Jigneshkumar Narsinhbhai and Chauhan Vanrajbhai Ranchhodbhai. Thus, without giving an opportunity of being heard to the petitioners, their Mark-sheets are revised. This court is of

the opinion that before taking such decision, the respondent authority ought to have given an opportunity to the petitioners. Further, the contention with regard to applicability of Regulation 12 of the Medical Council of India as to whether it was implemented earlier or not, what was the earlier practice, why it was not implemented earlier, all these are to be considered, more particularly when the result is revised after one month and ten days. Therefore, this court proposes to remand the matter to the respondent University with a liberty to the respondent University to take appropriate decision in accordance with law and on merits, after giving an opportunity of being heard to the petitioners, as the impugned decision is against the principle of natural justice. When any adverse order is passed, the person likely to be affected is required to be given an opportunity of hearing. It is cardinal principle of natural justice that no person can be condemned unheard.

As stated hereinabove, in the present case, before revising the Mark-sheets and even reducing the external marks also and before showing them as absent / failed, though they had appeared in the examination, no opportunity of hearing is given to the petitioners and therefore, the impugned decision is required to be quashed and set aside as the same is in breach of principle of natural justice.

8. For the reasons as aforesaid and without expressing any opinion on merits in favour of either parties,the impugned decision dtd.30/11/2005 revising earlier Mark-sheet dt.27/10/2005 of the petitioners is hereby quashed and set aside as the same is in breach of the principle of natural justice and the matter is remanded to the respondent No.1 University with a direction to pass appropriate order in accordance with law and on merits, after giving an opportunity of being heard to the concerned

petitioners within a period of SIX WEEKS from the date of receipt of writ of this order and the respondent No.1 shall communicate its decision to the respective petitioners. Rule is made absolute tot he aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J.)

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